

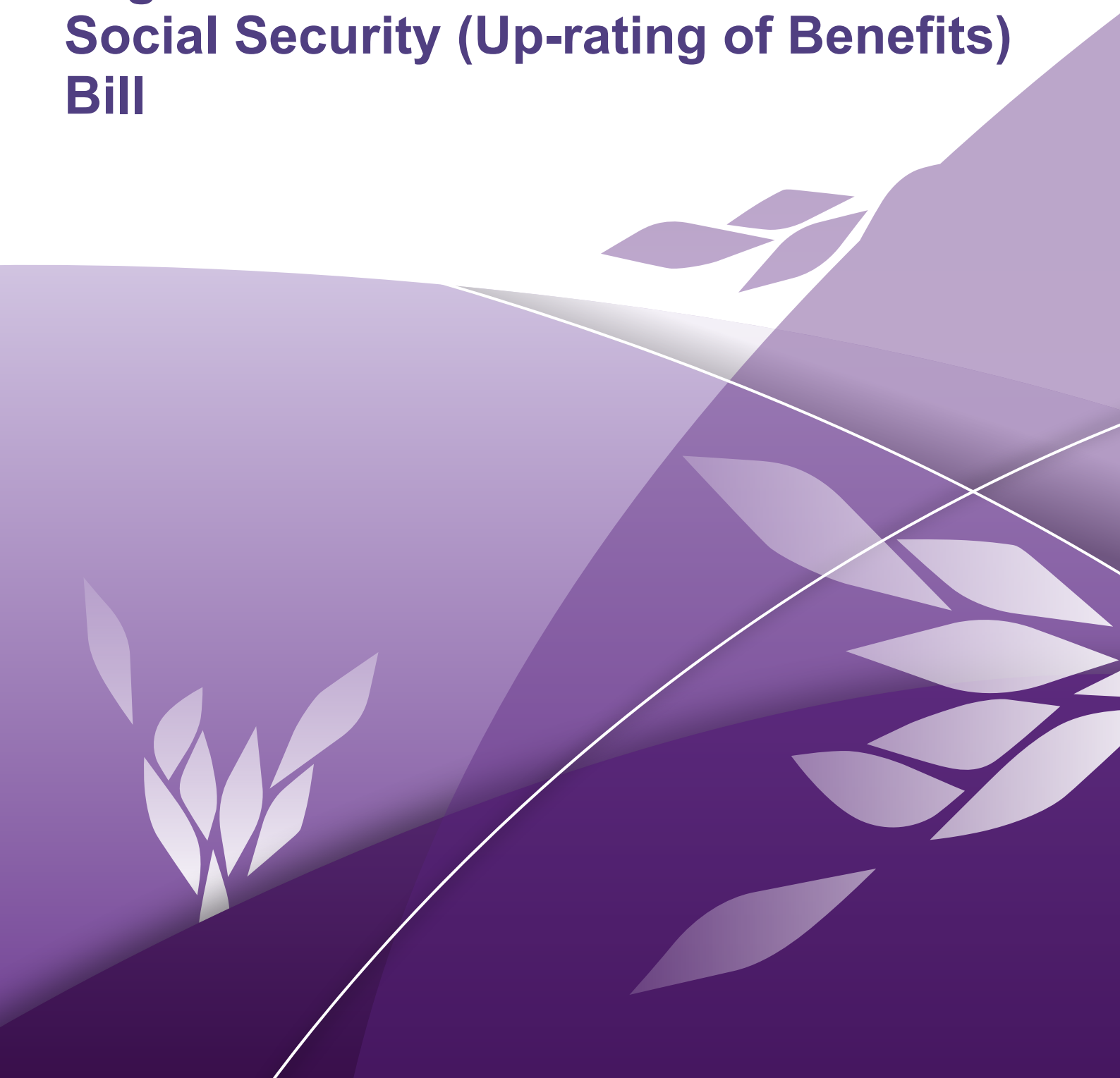


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Social Justice and Social Security Committee

Legislative Consent Memorandum - Social Security (Up-rating of Benefits) Bill



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Social Justice and Social Security Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government, excluding matters relating to local government, housing and planning.



sjss.committee@parliament.scot

Committee Membership



Convener
Neil Gray
Scottish National Party



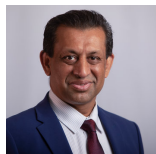
Deputy Convener
Natalie Don
Scottish National Party



Jeremy Balfour
Scottish Conservative
and Unionist Party



Miles Briggs
Scottish Conservative
and Unionist Party



Foyso Choudhury
Scottish Labour



Pam Duncan-Glancy
Scottish Labour



Marie McNair
Scottish National Party



Emma Roddick
Scottish National Party

Introduction

1. [The Social Security \(Up-rating of Benefits\) Bill](#) [HC] 2021-22 is a UK Government Bill introduced in the House of Commons on 8 September 2021. At the time of publication of this report, the Bill was at Second Reading stage in the House of Commons. Second Reading and all Commons stages of the Bill are scheduled to be taken on 20 September 2021.
2. Under an agreement formerly known as the “Sewel Convention”, the UK Parliament will not normally pass Bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. The Parliament should normally signify its consent before the final amending stage in the House of introduction.
3. The Parliament’s procedures under [Standing Orders Chapter 9B](#) require any legislative consent motion to be preceded by the lodging of a legislative consent memorandum and its consideration by a committee. The Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP, lodged memorandum [LCM-S6-7](#) for the Social Security (Up-rating of Benefits) Bill on 10 September 2021 and the Parliamentary Bureau referred this memorandum to the Committee, as 'lead committee', on 14 September 2021.

About the Bill

4. The Social Security (Up-rating of Benefits) Bill will enable the UK Government to suspend the ‘triple lock’ this year for the state pension and certain other benefits.
5. Up-rating is the annual mechanism by which the Secretary of State is required by law to conduct a review of applicable benefit and pension rates each year to determine whether they have retained their value in relation to the general level of prices or earnings.
6. Under the ‘triple lock’ pensions are normally uprated by the higher of 2.5%, Consumer Price Index (CPI) inflation or the rise in average earnings. By modifying section 150A of the Social Security Administration Act 1992 (the 1992 Act) the Bill would remove earnings growth from this list, meaning pensions would be uprated by 2.5% or CPI inflation, whichever is higher. This change would apply for the 2022-23 tax year only.
7. As well as applying to the state pension, the ‘triple lock’ also applies to certain other benefits, including the devolved benefit – survivors benefits in Industrial Death Benefit. This benefit is closed to new claims and is only payable for deaths that occurred before 1988. Currently around 300 people in Scotland receive it. Industrial Death Benefit is administered by the Department of Work and Pensions (DWP) under an agency agreement. Part of that agency agreement is to mirror DWP policies.
8. The UK Government has requested that Scottish Ministers make provision to allow for Industrial Death Benefit to be up-rated in 2022-23 in the same way that they will be up-rated in England and Wales. The Bill gives the necessary SSI powers to enable Scottish Ministers to deliver up-rating legislation in tandem with the UK.
9. Survivors’ benefits in Industrial Death Benefit fall within the legislative competence of the Scottish Parliament. It is the provisions relating to Industrial Death Benefit that trigger the Parliament’s Legislative Consent procedures. Other matters covered by the Bill are reserved.

Scrutiny of the Legislative Consent Memorandum

10. At its meeting on 16 September 2021ⁱ, the Committee took oral evidence from Ben Macpherson MSP, Minister for Social Security and Local Government.ⁱⁱ

Time available for scrutiny

11. According to the [explanatory notes](#) the Bill was introduced as soon as possible after it became clear from the indices that earnings growth over the review period had been significantly affected by the Coronavirus pandemic.ⁱⁱⁱ
12. The UK Government is seeking to fast-track the progress of the Bill in the UK Parliament because the Secretary of State for Work and Pensions, Rt. Hon. Therese Coffey MP, will need to have completed her review of earnings and made a Statement to Parliament by 26 November 2021, to meet hard IT delivery deadlines. Royal Assent would therefore be needed by mid-November at the latest.
13. The Minister said a Legislative Consent motion was "the right course of action" because if the agreement with the DWP had to be terminated, then the Scottish Government would have to make arrangements to administer the Industrial Death Benefit in a short space of time. As the Benefit relates to cases from before 1998, many of the cases are over 30 years old and held on paper files. This, the Minister said, posed a significant challenge to identify cases and transfer them to a new system in a short space of time. Alongside other social security transfer work, he said "it would not be achievable".
14. The Minister went on to advise the only alternative to the Legislative Consent mechanism would be to bring forward Scottish primary legislation. To meet the UK timetable the Bill would need an expedited timetable, with consideration of all stages in one day and an agreement for an expedited Royal Assent process - the Minister "did not consider this a good use of parliamentary time".
15. The Minister highlighted that the Scottish Government had had little notice from the UK Government about the Bill.
16. The Committee considers this situation underlines the need for good interactions between the UK and the Scottish Governments. We are keen to hear from the Secretary of State for Work and Pensions on how both Governments can work well together and communicate effectively to ensure best delivery of social security.

ⁱ Evelyn Tweed MSP attended as Committee substitute for Natalie Don MSP at this meeting

ⁱⁱ Official Report was not available at time of writing, the Minister for Social Security and Local Government's evidence can be viewed on Scottish Parliament TV:
<https://www.scottishparliament.tv/meeting/social-justice-and-social-security-committee-september-16-2021>

ⁱⁱⁱ [Explanatory Notes](#) Fast-Track Legislation, page 5 para 23

Other committee scrutiny

17. The Delegated Powers and Law Reform Committee considered the new delegated power at its meeting on 14 September and wrote to the Committee—

- ” The Delegated Powers and Law Reform Committee found that the power in section 150A of the Social Security Administration Act 1992, as modified by clause 1 of the Bill as enacted, to be acceptable in principle, and is content that the power remains subject to the affirmative procedure.

Recommendation

- 18. The Committee agrees with the recommendation of the Scottish Government that the Scottish Parliament should give its consent to the relevant provisions in the Social Security (Up-rating of Benefits) Bill [HC] 2021-22.**

Annex

19. **Letter from the Delegated Powers and Law Reform Committee to the Convener of the Social Justice and Social Security Committee, Neil Gray MSP.**

15 September 2021

Dear Neil

At its meeting on 14 September 2021, the Delegated Powers and Law Reform Committee considered the one relevant delegated power contained in the Social Security (Up-rating of Benefits) Bill as described in the Legislative Consent Memorandum (“LCM”) lodged by the Scottish Government for that Bill.

As the Social Justice and Social Security Committee will know, responsibility for Industrial Death Benefit as regards Scotland is devolved under the Scotland Act 2016. According to paragraph 11 of the LCM, the UK Government has requested that Scottish Ministers make provision to allow for Industrial Death Benefit to be up-rated in 2022/23 in the same way that it will be up-rated in England and Wales. The UK Government has therefore included provision in the Bill to give necessary SSI powers to enable Scottish Ministers to deliver uprating legislation in tandem with the UK.

As paragraph 20 of the UK Government’s Explanatory Notes to the Bill sets out, the legislation is required to be in place for up-rating for the 2022-23 tax year. It states that to ensure that individuals receive their increased pensions and benefits in the first week of the new tax year (per section 150A(7) of the [Social Security Administration Act 1992](#)), the up-rating process has to begin six months before those increases are due to take effect.

Clause 1 therefore modifies section 150A of the 1992 Act in relation to the tax year ending with 5 April 2022. It provides that the relevant pensions and benefits are to be reviewed by reference to the general level of prices rather than earnings, and that the uprating is to be by at least inflation or 2.5%, whichever is higher. The Bill provides that for Industrial Death Benefit within the legislative competence of the Scottish Parliament, the uprating is to be undertaken according to these requirements by the Scottish Ministers laying a draft order before the Scottish Parliament.

The Delegated Powers and Law Reform Committee found that the power in section 150A of the Social Security Administration Act 1992, as modified by clause 1 of the Bill as enacted, to be acceptable in principle, and is content that the power remains subject to the affirmative procedure.

The Committee also agreed to make you aware that it had identified an issue in the LCM that could benefit from further clarification. Specifically, while [paragraphs 4 and 8 of the LCM](#) refer to the current Bill creating a new discretionary power to up-rate, the relevant provisions appear to place duties on the Secretary of State (in reserved areas) and the Scottish Ministers (in devolved areas) to uprate in accordance with the requirements set out above.

I hope this correspondence is helpful to the Committee.

Yours sincerely

Stuart McMillan MSP

Convener of the Delegated Powers and Law Reform Committee

cc Minister for Social Security and Local Government, Ben Macpherson MSP (by email)

